

September 6, 2011

2011-2012 Regulatory Agendas for Employee Benefits Published by Treasury and DOL

The principal regulators of U.S. employee benefits have recently published their guidance plans for the coming months.

- On July 7, 2011, the U.S. Department of Labor (DOL) issued its [Spring 2011 Semi-Annual Regulatory Agenda](#). This publication takes the form of a Federal Register notice, to comply with certain administrative requirements. The agenda itself is available on the DOL Website with many entries supported by a fact sheet (click here for the [Fall 2010](#) entry; there does not appear to be a fact sheet for the Spring 2011 entry). DOL's agenda and related materials include 19 pending projects related to employee benefits, which are listed in the chart below in order of the projected timetable for next steps. (In the ordinary course, dates projected in the agenda may prove to be ambitious.)
- On September 2, 2011, the U.S. Treasury Department and the Internal Revenue Service (IRS) released their [2011-2012 Priority Guidance Plan](#), often informally referred to as the IRS Business Plan, and listed those issues that will be the subject of formal guidance from July 2011 through June 2012. The IRS Business Plan includes 37 pending items addressing retirement benefits and 29 pending items addressing executive compensation and health care and other benefits.

Projects added since the previously published agendas are shown in bold; there are 37 new initiatives. This is the first agenda that appears to include new tax projects arising out of the joint Treasury and DOL retirement income initiative.

Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
General			
Electronic Disclosure under ERISA		X	10/2011 (Reviewing public comments)
Definition of "fiduciary" <ul style="list-style-type: none"> Expand to include more persons, such as pension consultants, as fiduciaries 		X	11/2011 (Final regulation)
Prohibited transaction exemption procedures <ul style="list-style-type: none"> Amend current procedures to promote transparency and facilitate efficient consideration 		X	11/2011 (Final regulation)
Claims procedure <ul style="list-style-type: none"> Notice, timing, appeals and other elements of the claims procedure regulation 		X	12/2011 (Proposed regulation)
Retirement Plans			
Guidance on exceptions to additional tax under §72(t) on early distributions from retirement plans and IRAs	X		

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Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
Notice on cumulative list of changes in the requirements for §401(a) plans	X		
Final regulations on suspension or reduction of safe harbor contributions under §401(k) and (m)	X		
Guidance under §402 on transfers from foreign retirement plans	X		
Final regulations under §402(a) regarding the treatment of incidental benefits provided under a qualified plan	X		
Guidance under §402(c) on distributions that are disbursed to multiple destinations	X		
Regulations under §402A on distributions from designated Roth accounts that are disbursed to multiple destinations	X		
Guidance on §403(b) plans	X		
Guidance on rules applicable to IRAs under §§408 and 408A	X		
Guidance on rules applicable to ESOPs under §§409 and 4975	X		
Guidance updating regulations for service credit and vesting under §411	X		
Final regulations relating to hybrid plans under §§411(a)(13) and 411(b)(5), as added by the Pension Protection Act of 2006 (PPA)	X		
Guidance relating to conforming amendments adopted in connection with final regulations under §§411(a)(13) and 411(b)(5), as added by PPA	X		
Guidance on issues relating to pension equity plans	X		
Guidance on governmental plan status under §414(d)	X		
Guidance on procedures for ruling requests under §414(e) for church plans	X		
Guidance on pick-up arrangements under §414(h)(2)	X		
Regulations on eligible combined plans under §414(x), as added by PPA	X		
Guidance under §417 for defined benefit plans	X		
Guidance under §§417 and 401(a)(11) for defined contribution plans	X		
Final regulations on determination of minimum required contributions under §430, as added by PPA	X		
Regulations on additional issues relating to funding and related rules for single-employer plans under §§430 and 436	X		
Guidance on funding rules for multiemployer plans under §432, as added by the PPA	X		
Guidance providing a sample amendment for single-employer defined benefit plans to reflect benefit limitations under §436, as added by PPA	X		
Guidance under §4980F regarding notice requirements for certain plan amendments to hybrid plans	X		
Guidance related to compliance with certain reporting requirements under §§6057, 6058, and 6059 for retirement plans	X		
Guidance under §§6057, 6058, and 6059 providing a voluntary compliance program for late filers of Form 5500-EZ	X		

Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
Guidance relating to determination letter user fee exemption for certain retirement plans under §7528(b)(2)	X		
Revenue procedure updating Rev. Proc. 2005-16 for determination, opinion and advisory letters for pre-approved plans	X		
Revenue procedure updating Rev. Proc. 2007-44 for determination letters for individually designed plans	X		
Guidance on group trusts under Rev. Ruls. 81-100 and 2011-1	X		
Guidance on rollovers to defined benefit plans	X		
Update to Employee Plans Compliance Resolution System	X		
Guidance on application of normal retirement age rules to governmental plans	X		
Guidance on funding relief under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010	X		
Guidance on notice requirements applicable to single-employer plans that become subject to funding-based limitations, as added by PPA	X		
Guidance on issues related to lifetime income from retirement plans	X		
Statutory exemption for investment advice in participant-directed plans		X	8/2011 (Final regulation)
Enhanced fee disclosure for retirement plans <ul style="list-style-type: none"> ▪ Under ERISA service provider exemption 		X	9/2011 (Final regulation)
Target date funds <ul style="list-style-type: none"> ▪ Increased disclosure to participants 		X	11/2011 (Final regulation)
Pension benefit statements <ul style="list-style-type: none"> ▪ Implement PPA § 508 		X	12/2011 (Proposed regulation)
Abandoned plan program <ul style="list-style-type: none"> ▪ Amend to expand scope of individuals entitled to be a "qualified termination administrator" 		X	12/2011 (Proposed regulation)
Annual funding notice <ul style="list-style-type: none"> ▪ Implement PPA § 501 		X	1/2012 (Final regulation)
Executive Compensation			
Regulations under §83 to incorporate the holding in Rev. Rul. 2005-48	X		
Regulations providing model language on §83(b) elections	X		
Guidance under §162(m) on the application of the deduction limitation to certain payments of dividends or dividend equivalents	X		
Revenue ruling under §§280G and 4999(a) on change in ownership	X		
Guidance on application of §402(b) to participants in foreign nonqualified deferred compensation plans	X		
Guidance under §404 on the application of the "in which or with which ends" rule and the exceptions to that rule in §1.404(a)-12(b)	X		
Final regulations on income inclusion under §409A	X		
Notice on the application of §409A(b), as amended by PPA (regarding deferred compensation funded through a rabbi trust in certain situations)	X		
Guidance under §419A on the definition of post-retirement medical benefit	X		

Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
Guidance under §424(c)(1)(B) on whether there is a disposition of Incentive Stock Option or Employee Stock Purchase Plan shares on receipt of boot by a target shareholder in a §368(a)(1) reorganization	X		
Guidance under §457(f) on ineligible plans	X		
Health Care and Other Benefits			
Final regulations on cafeteria plans under §125	X		
Guidance on the \$2,500 annual limit on salary reduction contributions to cafeteria plan health flexible spending arrangements (health FSAs) under §125(i), as added by the Patient Protection and Affordable Care Act (PPACA)	X		
Notice on the applicability of §§132(d) and (e) to employer-provided cell phones following enactment of §2043 of the Small Business Jobs Act of 2010	X		
Guidance under §132(f) on the use of smart cards, debit cards and credit cards in providing qualified transportation fringe benefits	X		
Guidance on the application of §162(m)(6) as added by PPACA	X		
Notice under §223 on the effect of Indian Health Service coverage on eligibility to contribute to a Health Savings Account	X		
Regulations under §512 explaining how to compute unrelated business taxable income of voluntary employees' beneficiary associations described in §501(c)(9)	X		
Guidance on the employee retention credit under §400R	X		
Regulations under §§3101(b), 3102(f), and 1401(b) on additional Medicare tax on employees and self-employed individuals as added by PPACA	X		
Revenue ruling under §3121(q) updating Rev. Rul. 95-7 on tips	X		
Regulations under §§3127, 3121(b)(3)(A) and 3306(c)(5) making certain FICA exemptions available for disregarded entities	X		
Proposed regulations under §3504 designating certain parties who file employment tax returns under their EINs for their clients' workers as persons required to perform acts of employers	X		
Regulations under §4980G on interaction of §4980G and §125 with respect to comparable employer contributions to employees' HSAs	X		
Guidance on shared responsibility for employers regarding health coverage under §4980H, as added by PPACA	X		
Guidance on the reporting requirements under §6056, as added by PPACA	X		
Guidance on the tax treatment of health insurance premium rebates under Public Health Service Act §2718(b), as added by PPACA	X		
Guidance under §51(d) on whether a State Workforce Agency may accept a Form 8850 (Pre-Screening Notice and Certification Request for the Work Opportunity Credit) with faxed signatures of the job applicant and the employer	X		
Revenue ruling under §62(c) on wage recharacterization	X		

Guidance Project	Type		Projected Date (DOL Only)
	Tax	DOL	
Ex parte cease and desist and summary seizure orders <ul style="list-style-type: none"> Implement ERISA §521, enacted under PPACA 		X	9/2011 (Proposed regulation)
Enhanced fee disclosure for welfare plans <ul style="list-style-type: none"> Under ERISA service provider exemption 		X	2/2012 (Proposed regulation)
Guidance under Mental Health Parity and Addiction Equity Act <ul style="list-style-type: none"> Final regulation 		X	To be determined
Grandfathered health plan guidance under PPACA <ul style="list-style-type: none"> Final regulation 		X	To be determined
Preexisting conditions exclusions, lifetime and annual limits, and recessions and patient protections under PPACA <ul style="list-style-type: none"> Final regulation 		X	To be determined
Internal and external appeals processes under PPACA <ul style="list-style-type: none"> Final regulation 		X	To be determined
Automatic enrollment in health plans <ul style="list-style-type: none"> Implement FLSA §18a 		X	To be determined
Coverage of preventive services without cost sharing <ul style="list-style-type: none"> Implement ERISA §715, enacted under PPACA Final regulation 		X	To be determined
Dependent coverage of children to age 26 under PPACA <ul style="list-style-type: none"> Implement ERISA §715, enacted under PPACA Final regulation 		X	To be determined



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